



2024:DHC:4358



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 28th May, 2024

+ **BAIL APPLN. 4104/2023**

MOHD ALTAF

..... Applicant

versus

STATE GNCT OF DELHI

..... Respondent

Advocates who appeared in this case:

For the Applicant : Mr. Vineet Jain, Adv.

For the Respondent : Mr. Yudhvir Singh Chauhan, APP for the
State with Mr. Ashwani Kumar, Adv. with
Insp. Rajnish Kr., PS Sarai Rohilla.

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC') seeking bail in FIR No. 359/2018 dated 21.09.2018, registered at Police Station Sarai Rohilla, for offences under Sections 302/324 of the Indian Penal Code, 1860 ('IPC'). Chargesheet was filed against the applicant for the offences under Sections 302/324/325 of the IPC.

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2. It is alleged that on 21.09.2018, information was received from NKS Hospital regarding a person having been brought to the hospital with a deep incised wound in the right femoral region. It was informed that the deceased had been declared dead on arrival. During enquiry, the statement of the complainant/ eye witness Mohd. Shakeel (brother of the deceased) was recorded and the present FIR was registered.

3. It is the case of the prosecution that the deceased and his brother/ complainant were part of a Tazia procession and a quarrel erupted between another Tazia member and the deceased on the issue of further proceeding with the procession. It is alleged that during the confrontation, the assailant drew a knife and attacked one person, namely, Safare Alam, and the deceased intervened to protect him. It is alleged that thereafter, the assailant fatally stabbed the deceased. It is alleged that the assailant also attacked four other persons, namely, Sadil (PW5), Safrey Alam (PW2), Kamrey Alam (PW3) and Safilulla (PW6), with knife before running away. As per the FIR, the other persons who were injured identified the applicant as the assailant.

4. During investigation, the applicant was arrested on 22.09.2018, and a knife matching the description of the murder weapon was recovered at his instance from the bushes near Platform No. 2, Daya Basti Railway Station.

5. The learned Trial Court dismissed the applicant's regular bail application *vide* order dated 14.09.2023.

6. The learned counsel for the applicant submitted that the applicant

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has been falsely implicated in the present case without any cogent and corroborative evidence.

7. He submitted that all the public and material witnesses have already been examined before the learned Trial Court. He submitted that two of the injured witnesses and the complainant have failed to identify the applicant as the alleged assailant which creates doubts about the genuineness of the prosecution's case.

8. He submitted that the remaining witnesses which are left to be examined are formal in nature, being police officers and doctors.

9. He submitted that there is no forensic or other corroborative evidence found against the applicant to prove the alleged allegations against the applicant.

10. He submitted that nothing incriminating has been recovered from the possession of applicant. He submitted that no evidence has been adduced by the prosecution to establish that the knife allegedly recovered at the instance of the applicant is the weapon used in the commission of the alleged offence.

11. He submitted that the applicant had been released on interim bail on HPC guidelines and he duly surrendered on time. He submitted that there is no apprehension that the applicant will tamper with the prosecution evidence or evade the trial.

12. He submitted that barring the period of interim bail, the applicant has been in custody for over three and a half years and only eleven witnesses out of the 23 witnesses have been examined till now. He



submitted that the trial will likely take long to conclude.

13. *Per contra*, the Additional Public Prosecutor for the State opposed the bail application. He submitted that the allegations against the applicant are heinous in nature.

14. He submitted that the applicant had been correctly identified by the injured witness Mohd. Sadil (PW5), during his deposition before the learned Trial Court and the injured witness Safiullah (PW6) had also deposed against the applicant.

15. He submitted that the applicant did not give any attendance in the PS Sarai Rohilla after his release on interim bail and there is apprehension that the applicant will evade trial if he is granted bail.

ANALYSIS

16. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a prima facie case or reasonable ground to believe that the accused has committed the offence; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc.

17. The period of custody however is also an important factor which the Court has to keep in mind.

18. It is alleged that the applicant allegedly fatally stabbed the deceased victim along with four other victims pursuant to a quarrel at a



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tazia procession.

19. The present FIR was registered on a complaint given by the brother of the deceased victim. The case of the prosecution essentially relies upon the statements of the injured victims, that is, Sadil (PW5), Safrey Alam (PW2), Kamrey Alam (PW3) and Safilulla (PW6), and the complainant (PW1), who is also an eye witness.

20. The said witnesses supported the case of the prosecution in their statements recorded under Section 164 of the CrPC.

21. Thereafter, during examination, the complainant (PW1) failed to identify the applicant, and two of the injured witnesses (PW2 and PW3) resiled from their previous statements and also failed to identify the applicant. Insofar as the depositions of the other injured witnesses, that is, PW5 and PW6, is concerned, although they have both identified the applicant and stated that he had inflicted knife injuries on them, they have not stated that the applicant was the person who had inflicted the injuries on the deceased.

22. The statements of PW5 and PW6, at this stage, point towards the offences under Sections 324/325 of the IPC, which involve maximum punishment of imprisonment for a maximum period of three and seven years respectively.

23. It is settled law that the statement of a witness is only a piece of evidence, and for the purpose of conviction, the corroborated part of the evidence of a hostile witness regarding the commission of the offence is to be treated as admissible [Ref. *Mrinal Das v. State of Tripura* :

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(2011) 9 SCC 479). The Trial Court while deciding the case has to consider the entire material on record, and can definitely look into the circumstances and other evidence put forth by the prosecution while passing the judgment.

24. However, this Court while considering the application of Bail cannot lose sight of the fact that three of the prime witnesses to the incident have become hostile and the statement of the other two injured witnesses do not reflect the allegations under Section 302 of the IPC.

25. It is also alleged that the knife used by the applicant to stab the victims was recovered at his instance. It is mentioned in the Status Report that the Doctor had examined the knife and opined that the injuries mentioned in the post mortem report of the deceased victim could have been caused by the said knife and other weapons similar to it.

26. In the absence of any incriminating material, like a DNA exhibit, to link the recovered knife with the alleged offence, at this stage, at best, it can only be said that the knife could have been used in the commission of the offence.

27. In view of the same, *prima facie*, at this stage, the non-involvement of the applicant in the offence under Section 302 of the IPC for having inflicted the injuries on the deceased victim cannot be ruled out.

28. It is also not denied that the applicant has clean antecedents and is in custody since 22.09.2018, barring the time when he was released

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on interim bail. Charges have been framed and the injured witnesses and the complainant have also already been examined in the present case. In view of the same, this Court is of the opinion that no purpose would be served by keeping the applicant in further custody.

29. However, appropriate conditions ought to be put to allay the apprehension of the applicant tampering with the evidence or evading the trial.

30. Considering the aforesaid discussion, the applicant is directed to be released on bail on furnishing a personal bond for a sum of ₹20,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court/ Duty MM / Link MM, on the following conditions:

- a. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- b. The applicant shall under no circumstance leave the boundaries of the country without the permission of the learned Trial Court;
- c. The applicant shall appear before the learned Trial Court as and when directed;
- d. The applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
- e. The applicant shall, upon his release, give his mobile number

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to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

31. In the event of there being any FIR/ DD entry/ complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

32. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

33. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

MAY 28, 2024

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